
**RESPONSE TO THE HOME OFFICE CONSULTATION
IN RESPECT OF LOCALLY SET LICENCE FEES**

Purpose of Report

1. To invite Members to approve a response by Members of the Licensing Committee to the Home Office consultation into the proposal to introduce locally set licence fees in respect of the Licensing Act 2003.

Information and Analysis

2. Licence Fees in respect of licences and permissions issued under the Licensing Act 2003 (“the 2003 Act”) were set centrally by government in 2005. These fees were meant to cover the costs that licensing authorities occur in implementing the 2003 Act. These national fees have not been revised since their inception and it was of concern to licensing authorities from the commencement of this legislation that the set fees would not cover the cost of this function.
3. The Police Reform and Social Responsibility Act 2011 introduced a power for the Home Secretary to prescribe in regulations that these fee levels should be set by individual licensing authorities.
4. A consultation document has been issued by the Home Office inviting comments on the proposal for locally set licensing fees and looking at criteria for fee differentials. The consultation commenced on 13 February 2014 and closes on 10 April 2014.
5. A joint response from the majority of the Tees Valley Authorities has been initially undertaken and it is proposed that this response should also be sent from Darlington Council’s Licensing Act Committee. It has a been attached for Members’ consideration at **Appendix A**.

Legal Implications

6. There are no issues that the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the response.

Crime and Disorder Act 1998 Section 17

7. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The contents of the Appendix to this report directly impact on this responsibility.

Recommendation

8. Members are invited to approve the response to the consultation and confirm that this response be emailed to the Home Office prior to the closure of the consultation on 10 April 2014.

Richard Alty
Director of Economic Growth

Background Papers

- (i) The Licensing Act 2003
- (ii) The Police Reform and Social Responsibility Act 2011
- (iii) The Home Office Consultation Document – A consultation on fees under the Licensing Act 2003

Appendices

Appendix A The Response of Darlington Council's Licensing Committee to the Home Office Consultation - A consultation on fees under the Licensing Act 2003.

Pam Ross : Extension 2647

**RESPONSE TO HOME OFFICE CONSULTATION ON LOCALLY SET
LICENSING FEES (LICENSING ACT 2003)**

Consultation Question 1:

Do you agree or disagree that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?

We AGREE. We have instances where small local public houses, based in the centre of town attract a higher annual fee etc than larger nightclub type premises because of their location.

Consultation Question 2:

If you disagree, please provide evidence that higher national non-domestic rateable value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

N/A

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

We AGREE.

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Our experience is that premises with a later terminal hour are generally more likely to be subject to representations, additional enforcement and review hearings.

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

We AGREE

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

N/A

APPENDIX A (cont)

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

We AGREE

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

N/A

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

We AGREE

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Discretion would permit licensing authorities to exclude premises on a variety of grounds e.g. where there is not a history of issues; when there is a local occasion for celebration etc

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

We AGREE

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

These are the premises to which a multiplier already applies because of the higher risk of crime and disorder and public nuisance which leads to additional enforcement requirements. Frequently such premises are vertical drinking establishments where patrons focus exclusively on alcohol consumption

APPENDIX A (cont)

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

We AGREE, however we believe that clear, nationally issued guidance in respect of this is essential.

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

N/A

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

We DISAGREE on the basis that licensing authorities should have the option to levy a higher fee for either criterion based on local knowledge of the problems raised by premises that may fall only into one of the 2 proposed categories

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

We AGREE

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

We believe that discretion should be exercised on a case-by-case basis rather than producing a definitive list of premise, as with a defined list it may be that a current premises type is missed or a future type of premises is not included.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

It is understood that some licensing authorities have already submitted data to central government showing their costs for various activities. Different fees could be based

APPENDIX A (cont)

on the level of enforcement required at a particular premises. It is also acknowledged that this could lead to challenges.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

We AGREE

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

The caps need to be reviewed regularly so that licensing authorities do not end up in the same situation as now where fees have remained static since 2005.

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

We AGREE

Consultation Question 22:

Please set out evidence for your answer in the box below, keeping your views to a maximum of 200 words.

We believe that while £100 would not cover the cost of a contested TEN which requires a hearing, the overall sum raised, averaged out each year, would meet our costs

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally set fees are implemented, to:

23a: publish their proposed fee levels?

We AGREE

23b: publish the basis on which they have been calculated?

We AGREE

23c: publish the measures they have taken to keep costs down?

We DISAGREE

23d: *invite comments from interested parties?*

We AGREE

Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

We believe that we have been driven by efficiency for several years and continue to operate in such a manner. We suggest the following steps are being/can be taken:

- **Setting fees by application of a standard formula**
- **Risk rating of all premises**
- **Publication of clear information on our websites**
- **On-line applications**
- **Pre-application advice**
- **Regular review of our processes**
- **Regular consultation with neighbouring licensing authorities**

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

We AGREE

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

We AGREE however we are aware that some licensing authorities' recharges are based on notional costs (which are clearly below the actual cost to that service) when charging is based on actual costs this will place an additional pressure on the licensing budget.

APPENDIX A (cont.)

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990. (Given that these functions are funded through taxation, and should not be funded by fees under the 2003 Act merely because they arise in respect of premises that hold an authorisation under the 2003 Act, see paragraph 8.5 above).

We AGREE

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

No we do not think that there are any further activities which may be seen as gold plating.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

We AGREE

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

We **DON'T KNOW**. We have not had the opportunity to consider the Impact Assessment

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

N/A